

REMARKS

This response is submitted in response to the Office Action dated April 30, 2004. The Office Action rejects Claims 8-24, 29, and 34 under 35 U.S.C. § 112. In addition, Claims 1-34 stand rejected under 35 U.S.C. § 103 and Claims 33 and 34 under 35 U.S.C. § 101. In response Claims 1, 8, 17, 19, 25, 29, 30 and 32-34 have been amended. These amendments do not add new matter. Applicants respectfully submit that in view of the amendments to the claims and for the reasons set forth below, that the rejections either have been overcome or are improper for the following reasons.

Initially, the Office Action rejects certain of the claims under 35 U.S.C. § 112 stating that the specification while being enabling for improving the condition of an elderly pet, does not reasonably provide an enablement for reversing the sign of aging or increasing the longevity. Applicants respectfully disagree.

As specifically set forth in the example, Applicants have demonstrated in Example 1 that the diet of the present invention (diet C) results in 100 percent of the elderly cats on the diet surviving for six months while 75 percent of the cats on the control diet died. This clearly demonstrates increase in the longevity of cats. No cats died on diet (C)! 25% of the cats died on the control diet! Applicants have specifically limited all of the method claims to elderly cats and therefore Applicants respectfully submit that Applicants' patent application provides enablement.

With respect to the alleged lack of enablement vis-à-vis the signs of aging, one of the signs of aging in a pet is reduced activity. Applicants have demonstrated in Example 2 that they have increased the activity of elderly cats over a six month period. This is in contrast to a control diet wherein the activity of the elderly cats decreased. Thus, diet C not only reduced a sign of aging, it reversed it; the claimed diet increased activity in the cat. So, once again, Applicants respectfully submit that the specification does provide enablement under 35 U.S.C. § 112.

With respect to the statement that the phrase reversal of the sign of aging is indefinite, in that the specification allegedly does not define what these signs are, Applicants respectfully submit that this statement is incorrect. On page 1, lines 11-15, signs of aging are specifically set forth. One such sign is lower activity levels. Furthermore, Applicants respectfully submit that one skilled in the art would know what the signs of aging, as used in the veterinarian art, are. Accordingly, Applicants request that the 35 U.S.C. § 112 rejection be withdrawn.

With respect to claims 33 and 34 the rejections of those claims it is respectfully submitted has been overcome in view of amendments. Therefore, Applicants request that it be withdrawn.

Claims 1-4, 7-12, 15-20, 22-25, 27, 29-30, and 33-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over *Branam*, *Mosier*, *Hayek*, *Hayek et al.*, and *BASF*. With respect to Claims 5, 13, and 28 *Lowe* and *Shields* have been added to the obviousness rejection. Applicants respectfully submit that in view of the amendments to the claims and for the reasons set forth below, the rejections are not proper or have been overcome.

First, Applicants note that the majority, if not all, of these references specifically relate to dogs. In part, since dogs have different diets, dogs being omnivorous, and cats being carnivores, you cannot assume that something that would work in a dog would also work for a cat.

Furthermore, as the Patent Office has noted in its 35 U.S.C. § 112 rejection, there is some unpredictability in the art. Absent an example in the references demonstrating increasing longevity, reversal of a sign of aging, or an increase in the activity of an elderly cat, it would not be obvious to mix and match nutritional formulations and expect efficacy in an elderly cat.

Still, further, Applicants respectfully submit that the examples set forth in the specification demonstrate unexpected results that clearly overcome any possible obviousness argument. Applicants diet increased longevity and reversed the signs of aging in elderly cats. These unexpected results belie any obviousness argument.

Therefore, Applicants respectfully submit that in view of the amendments to the claims as well as the unexpected results demonstrated by Example 1, that the obviousness rejection has either been overcome or is improper.

Accordingly, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,
BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: October 15, 2004